

Senate Bill No. 579

CHAPTER 504

An act to amend Sections 48623, 48624, 48632, 48651, 48651.5, 48652, 48653, 48660.5, 48662, 48670, 48673, 48674, 48676, and 48691 of, to add Section 48610.3 to, and to repeal Section 48654 of, the Public Resources Code, relating to oil, and making an appropriation therefor.

[Approved by Governor September 29, 2010. Filed with
Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 579, Lowenthal. Used oil.

(1) The California Oil Recycling Enhancement Act, administered by the Department of Resources Recycling and Recovery, among other things, authorizes the department to issue grants to, or contract with, local governments, nonprofit entities, and private entities for specified purposes including, among other things, the purpose of protecting advancements and developments in lubricating oil. Existing law establishes the Used Oil Recycling Fund and continuously appropriates money from the fund to the department to provide, among other things, grants and contracts to local governments, nonprofit entities, and private entities.

This bill would instead authorize the department to issue grants to, or contract with, local governments, nonprofit entities, and private entities for the purpose of product advancements and developments in lubricating oil. By changing the purposes for which money in the fund may be used, the bill would make an appropriation. This bill would revise the definition of “used oil hauler” and “used oil recycling facility” for purposes of the act and would make conforming changes in the act with regard to the administration of the act by the department.

(2) The act requires the department to pay a recycling incentive to every industrial generator, curbside collection program, and certified used oil collection center for collected or generated used lubricating oil, including the amount of used oil transported under certain conditions to an out-of-state recycling facility registered with, or certified by, the department and operating in substantial compliance with certain federal regulations. The act also requires the department, on and after January 1, 2013, to pay a rerefining incentive to certain recycling facilities that produce rerefined base lubricants meeting specified requirements and to set the amount, on and after January 1, 2014, at 2 cents per gallon.

This bill would revise the conditions under which the used oil is required to be transferred to a registered or certified out-of-state recycling facility. The bill would change the date to January 1, 2013, when the department is required to set the amount of the rerefining incentive at 2 cents per gallon

and would specify that the rerefining incentive is paid to a recycling facility for rerefined oil produced from used oil.

(3) The act requires the department to provide funds from the California Used Oil Recycling Fund to rural counties for local government-sponsored collection efforts for certain costs. The act imposes certain conditions with regard to the payment of the recycling incentive in small rural counties.

This bill would repeal the requirement that provides funds to rural counties and the conditions for payment of the recycling incentive in small rural counties.

(4) The act requires used oil recycling facilities and certain registered or certified out-of-state recycling facilities to submit a report to the department regarding the resultant amount of recycled oil product.

This bill would instead require the report to include the disposition of the used oil, including the volume of any resultant product.

(5) The act requires industrial and lubricating oil sales and recycling to be reported at the end of each 6-month period.

This bill would instead require the department to make this information available as an annual report on its Internet Web site.

The bill would also make various technical and conforming changes to the act.

(6) Because a violation of the requirements imposed by the bill would be a crime, the bill would impose a state-mandated local program.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 48610.3 is added to the Public Resources Code, to read:

48610.3. "Board" means the Department of Resources Recycling and Recovery.

SEC. 2. Section 48623 of the Public Resources Code is amended to read:

48623. "Used oil hauler" means a hazardous waste transporter registered pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code who transports used oil to a used oil recycling facility that is certified or registered with the board pursuant to Section 48662, to a used oil storage facility, or to a used oil transfer facility.

SEC. 3. Section 48624 of the Public Resources Code is amended to read:

48624. "Used oil recycling facility" means a facility that is issued a hazardous waste facilities permit or grant of interim status by the department pursuant to Section 25200 or 25200.5 of the Health and Safety Code to convert used oil into recycled oil, or an out-of-state facility operating in

substantial compliance with Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations for the purpose of recycling used oil.

SEC. 4. Section 48632 of the Public Resources Code is amended to read:

48632. The Department of Resources Recycling and Recovery may, pursuant to subdivision (b) of Section 48631, issue grants to or contract with local governments, nonprofit entities, and private entities, for any of the following purposes:

(a) Providing and maintaining collection and recycling opportunities for used lubricating oil and filters that are in addition to those included in the local used oil collection programs adopted pursuant to Article 10 (commencing with Section 48690).

(b) Research, testing, and demonstration projects for in-service uses, collection technologies, and end-of-life used oil management.

(c) Developing uses and markets for low environmental impact products resulting from the recycling of used oil, including, but not limited to, promoting the manufacture of rerefined lubricating oil.

(d) Product advancements and developments in lubricating oil resulting from, but not limited to, new requirements or technologies in fuel efficiency and performance, synthetic or biobased lubricants, alternative fuels, and methods to extend lubricating oil life.

(e) Education and mitigation projects relating to stormwater pollution from used oil and its impacts on receiving waters, soils, and oceans.

(f) A local government shall not receive a grant or contract pursuant to this section for any purpose identified in subdivision (e) unless the local government certifies that it has a stormwater management program that is approved by the appropriate California regional water quality control board and that the project approved for funding under subdivision (e) is consistent with that approved stormwater management program.

(g) An information and education program pursuant to subdivision (c) of Section 48631.

SEC. 5. Section 48651 of the Public Resources Code is amended to read:

48651. The board shall pay a recycling incentive pursuant to subdivision (a) of Section 48652 to every industrial generator, curbside collection program, and certified used oil collection center, for used lubricating oil collected from the public or generated by the certified used oil collection center or the industrial generator, if either of the following conditions apply:

(a) The used lubricating oil is transported by a used oil hauler to a used oil storage facility or to a used oil transfer facility and that used oil storage facility or used oil transfer facility causes that oil to be transported by a used oil hauler to an in-state used oil recycling facility that is certified pursuant to subdivision (a) of Section 48662 or to an out-of-state used oil recycling facility registered pursuant to subdivision (b) of Section 48662 or certified pursuant to paragraph (2) of subdivision (c) of Section 48662 for the purpose of producing recycled oil as defined in Section 48620.

(b) The used lubricating oil is transported by a used oil hauler directly to an in-state used oil recycling facility that is certified pursuant to

subdivision (a) of Section 48662, or to an out-of-state used oil recycling facility registered pursuant to subdivision (b) of Section 48662 or certified pursuant to subdivision (c) of Section 48662, for the purpose of producing recycled oil, as defined in Section 48620.

SEC. 6. Section 48651.5 of the Public Resources Code is amended to read:

48651.5. (a) Effective January 1, 2013, the board, with regard to promoting the recycling of used lubricating oil into rerefined oil, shall pay a rerefining incentive pursuant to subdivision (b) of Section 48652 to a recycling facility for rerefined oil produced from used oil if all of the following conditions are met:

(1) The facility is an in-state or out-of-state recycling facility that is certified in accordance with subdivision (c) of Section 48662 and produces rerefined base lubricant meeting the specifications of rerefined oil, as defined in Section 48620.2.

(2) The used oil was generated and collected within the state and prior to treatment or processing has been tested to meet the definition of used oil, as specified in paragraph (1) of subdivision (a) of Section 25250.1 of the Health and Safety Code.

(3) The facility submits to the board a completed used oil rerefining incentive payment claim in the form and manner that the board may prescribe.

(b) (1) To further promote the safe management of used oil, and to review the changes in policy and program enacted by the Legislature by Chapter 353 of the Statutes of 2009, without implying that any further changes are necessary and warranted, the board, using existing financial resources, shall do all of the following:

(A) Contract with a third-party consultant with recognized expertise in life-cycle assessments to coordinate a comprehensive life-cycle analysis of the used lubricating and industrial oil management process, from generation through collection, transportation, and reuse alternatives.

(B) Solicit input from representatives of all used oil stakeholders in defining the scope and design of the life-cycle analysis, in conducting the life-cycle analysis, and in issuing a draft report for public review and comment.

(C) Evaluate the positive and negative impacts of the testing requirements established in Section 25250.29 of the Health and Safety Code, the tiered fee on lubricating oil established in Section 48650, and the tiered incentive payments established in Section 48652, on used oil collection rates.

(D) On or before January 1, 2014, submit a report to the Legislature, in compliance with Section 9795 of the Government Code, describing the findings of the life-cycle analysis and the evaluation of the used oil management policies on used oil collection rates specified in subparagraph (C) and provide any recommendations for statutory changes that may be necessary to promote increased collection and responsible management of used oil.

(2) All costs incurred by the board and its contractors in meeting the requirements of this subdivision shall be covered by the additional one-half-cent (\$.005) fee established in subdivision (a) of Section 48650, and effective through December 31, 2013, pursuant to subdivision (d) of Section 48650.

(c) The requirement for submitting a report pursuant to subparagraph (D) of paragraph (1) of subdivision (b) is inoperative on January 1, 2018.

SEC. 7. Section 48652 of the Public Resources Code is amended to read:

48652. (a) Except as provided in subdivision (d), the board shall set the recycling incentive at not less than ten cents (\$.10) per quart. The board may set the amount at an amount higher than ten cents (\$.10) if the board determines that a higher amount is necessary to promote the collection and recycling of used lubricating oil and sufficient funds are available in the fund.

(b) On and after January 1, 2013, the board shall set the rerefining incentive at not less than two cents (\$.02) per gallon. On and after January 1, 2015, the board may set the rerefining incentive at a higher amount if the board determines that a higher amount is necessary to promote rerefining of used lubricating oil and sufficient funds are available in the fund.

(c) The board shall not change the amount of an incentive paid pursuant to this section until at least one year has passed since the amount was last set. The amount of an incentive paid by the board shall remain at the previous amount for one month after setting the incentive at a different amount. The board shall not raise the amount of an incentive paid unless it finds that the raise will not adversely affect funding required pursuant to Sections 48631, 48653, and 48660.5.

(d) The board shall set the recycling incentive for used oil generated by a certified used oil collection center and an industrial generator at not less than four cents (\$.04) per quart. The board may set the amount higher than four cents (\$.04), if the board determines that a higher amount is necessary to promote the collection and recycling of used lubricating oil from these generators and sufficient funds are available.

SEC. 8. Section 48653 of the Public Resources Code is amended to read:

48653. The board shall deposit all amounts paid pursuant to Section 48650 by manufacturers, civil penalties, and fines paid pursuant to this chapter, and all other revenues received pursuant to this chapter into the California Used Oil Recycling Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the fund is to be appropriated solely as follows:

(a) Continuously appropriated to the board for expenditure for the following purposes:

(1) To pay recycling incentives pursuant to Section 48651.

(2) To provide a reserve for contingencies, as may be available after making other payments required by this section, in an amount not to exceed one million dollars (\$1,000,000).

(3) (A) To make payments for the implementation of local used oil collection programs adopted pursuant to Article 10 (commencing with

Section 48690) to cities, based on the city's population, and counties, based on the population of the unincorporated area of the county. Payment shall be determined by multiplying the total annual amount by the fraction equal to the population of cities and counties that are eligible for payments pursuant to Section 48690, divided by the population of the state. The board shall use the latest population estimates of the state generated by the Population Research Unit of the Department of Finance in making the calculations required by this paragraph. Notwithstanding subdivision (b) of Section 48656, the total annual amount shall equal eleven million dollars (\$11,000,000), subject to subparagraph (B).

(B) If sufficient funds are not available to initially issue full funding pursuant to subparagraph (A), the board shall provide funding as follows:

(i) For the purposes set forth in this paragraph, one-half of the amount that remains in the fund after the expenditures are made pursuant to paragraphs (1) and (2) and subdivision (b). The board may utilize additional amounts from the fund, up to, but not exceeding, eleven million dollars (\$11,000,000).

(ii) As the board finds is fiscally appropriate, for the purposes set forth in Section 48656. The board shall give priority to the distribution of funding in clause (i) for the purposes of this paragraph.

(C) Pursuant to paragraph (2) of subdivision (d) of Section 48691, it is the intent of this paragraph that at least one million dollars (\$1,000,000) be made available specifically for used oil filter collection and recycling programs.

(4) To implement Section 48660.5, in an amount not to exceed two hundred thousand dollars (\$200,000) annually.

(5) For expenditures pursuant to Section 48656.

(b) The money in the fund may be expended by the board for the administration of this chapter and by the department for inspections and reports pursuant to Section 48661, only upon appropriation by the Legislature in the annual Budget Act.

(c) (1) Except as provided in paragraph (2), the money in the fund may be transferred to the Farm and Ranch Solid Waste Cleanup and Abatement Account in the General Fund, upon appropriation by the Legislature in the annual Budget Act, to pay the costs associated with implementing and operating the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program established pursuant to Chapter 2.5 (commencing with Section 48100).

(2) The money in the fund attributable to a charge increase or adjustment made or authorized in an amendment to subdivision (a) of Section 48650 by the act adding this paragraph shall not be transferred to the Farm and Ranch Solid Waste Cleanup and Abatement Account.

(d) Appropriations to the board to pay the costs necessary to administer this chapter shall not exceed three million dollars (\$3,000,000) annually.

(e) The Legislature hereby finds and declares its intent that three hundred fifty thousand dollars (\$350,000) should be annually appropriated from the California Used Oil Recycling Fund in the annual Budget Act to the board,

commencing with fiscal year 2010–11, for the purposes of Section 48655 and to conduct those investigations and enforcement actions necessary to ensure a used oil storage facility or used oil transfer facility causes the used lubricating oil to be transported, as required by subdivision (a) of Section 48651.

SEC. 9. Section 48654 of the Public Resources Code is repealed.

SEC. 10. Section 48660.5 of the Public Resources Code is amended to read:

48660.5. (a) If the board finds that a shipment of used oil from a certified used oil collection center, curbside collection program, or uncertified publicly funded used oil collection center in a small rural county is contaminated by hazardous materials in excess of that which generally occurs in normal use, which renders the used oil infeasible for recycling, and requires that the used oil be destroyed at a substantially higher cost than the cost generally to recycle used oil, the board shall, upon application by the used oil collection center or curbside collection program, reimburse the center or program for the additional disposal cost, subject to the eligibility requirements of subdivision (b), except as provided in subdivision (c).

(b) A certified used oil collection center, curbside collection program, or uncertified publicly funded used oil collection center in a small rural county is eligible for reimbursement only if it demonstrates to the satisfaction of the board all of the following, except that paragraph (1) does not apply to an uncertified publicly funded used oil collection center in a small rural county:

(1) The center or program has established procedures to ensure that the used oil it generates and accepts from the public will not be mixed with other hazardous wastes, especially halogen-contaminated and polychlorinated biphenyl-contaminated wastes. These procedures shall include, but not be limited to, instructing the public and employees that used oil shall not be mixed with other hazardous waste. The board shall not require a center or program to test used oil received from the public as part of these procedures.

(2) The shipment contains not more than five gallons or pounds of contaminants combined, based on the contaminant concentrations and the total volume or weight of the shipment.

(c) In a calendar year, a certified used oil collection center, curbside collection program, or uncertified publicly funded used oil collection center in a small rural county shall be reimbursed for not more than one shipment and for not more than five thousand dollars (\$5,000) in disposal costs for halogen-contaminated waste or not more than the actual net additional costs of disposing of polychlorinated biphenyl-contaminated wastes, subject to the availability of funds pursuant to paragraph (4) of subdivision (a) of Section 48653.

SEC. 11. Section 48662 of the Public Resources Code is amended to read:

48662. (a) The board shall certify or recertify a used oil recycling facility located in this state for which the board has received a report from the department pursuant to Section 48661, unless the board determines that the

facility is engaged in a repeating or recurring pattern of noncompliance that poses a significant threat to public health and safety or the environment.

(b) The board shall require an out-of-state recycling facility, that receives used oil from a California generator and to which a recycling incentive may be paid, to register with the board declaring under penalty of perjury that the facility is operating in substantial compliance with Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations. An out-of-state recycling facility registering with the board pursuant to this subdivision shall, upon request, provide the board or the department with a copy of any inspection report issued for the facility by, or any other enforcement related documents available to, the agency responsible for enforcing Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations at the facility.

(c) The board shall certify or recertify a rerefiner of used oil, which may be located in this state or be an out-of-state facility, for which the board has received a report from the department that the facility meets either of the following requirements:

(1) If the used oil recycling facility is located in this state, the used oil recycling facility is certified pursuant to subdivision (a) and produces rerefined base lubricant meeting the specifications in Section 48620.2.

(2) If the used oil recycling facility is an out-of-state facility, the facility demonstrates to the satisfaction of the department all of the following:

(A) The facility substantially meets the requirements in Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

(B) The facility produces rerefined base lubricant meeting the specifications in Section 48620.2. An out-of-state recycling facility certified by the board pursuant to this subdivision shall, upon request, provide the board or the department with a copy of records demonstrating that the used oil has been recycled to meet the specifications for rerefined oil, as defined in Section 48620.2.

(d) An out-of-state facility that seeks certification shall, pursuant to subdivision (c), annually certify in writing to the board, under penalty of perjury, that the facility substantially meets the requirements in paragraph (2) of subdivision (c).

(e) Paragraph (2) of subdivision (c) does not require the department to inspect or prohibit the department from inspecting an out-of-state facility to determine whether the department is satisfied that the facility substantially meets the requirements for certification.

(f) As a condition of demonstrating compliance pursuant to paragraph (2) of subdivision (c), a facility shall enter into an agreement with the department pursuant to Section 25201.9 of the Health and Safety Code to pay the department's full expenses of conducting the review and any inspection costs the department may incur in determining whether the facility meets the requirements for certification.

(g) If the board denies certification to a facility subject to subdivision (a) or (c), the board may subsequently certify the facility if it determines that the facility meets the standards for certification.

SEC. 12. Section 48670 of the Public Resources Code is amended to read:

48670. (a) To be eligible for payment of a recycling incentive, an industrial generator of used lubricating oil, a used oil collection center, or a curbside collection program shall report to the board, for each quarter, based on the following reporting limitations and requirements:

(1) The amount of lubricating oil purchased and the amount of used lubricating oil that is transported to a certified used oil recycling facility, to a used oil storage facility, or to a used oil transfer facility, or that is transported to an out-of-state recycling facility registered pursuant to subdivision (b) of Section 48662 or certified pursuant to paragraph (2) of subdivision (c) of Section 48662.

(2) The amount of used lubricating oil collected from the public, for use in determining the recycling incentive payment, that is transported to a certified used oil recycling facility, to a used oil storage facility, or to a used oil transfer facility, or that is transported to an out-of-state recycling facility registered pursuant to subdivision (b) of Section 48662 or certified pursuant to paragraph (2) of subdivision (c) of Section 48662.

(b) The reports shall be submitted on or before the 45th day following each quarter, in the form and manner that the board may prescribe, and shall include copies of manifests or modified manifest receipts from used oil haulers.

(c) The board may delegate to its executive officer the authority to accept reports submitted after the 45th day and to reduce, eliminate, or approve the amount of incentive fee to be paid due to the late submission of the report. The board may provide, by regulation, for a longer reporting period for industrial generators that generate less than 1,000 gallons of used oil annually.

SEC. 13. Section 48673 of the Public Resources Code is amended to read:

48673. (a) A used oil recycling facility issued a permit by the department to produce recycled oil, as defined in Section 25250.1 of the Health and Safety Code, and an out-of-state recycling facility that is either registered with the board pursuant to subdivision (b) of Section 48662 or certified by the board pursuant to paragraph (2) of subdivision (c) of Section 48662, shall report to the board for each quarter the amount of California used oil received and its disposition, including the volume of any resultant product.

(b) A facility subject to this section shall provide estimates, where feasible, of the amount that is used lubricating oil and the amount that is used industrial oil.

(c) The reports required by this section shall be submitted on or before the last day of the month following each quarter, in the form and manner that the board may prescribe.

SEC. 14. Section 48674 of the Public Resources Code is amended to read:

48674. After receiving payments pursuant to paragraph (3) of subdivision (a) of Section 48653, each local government shall submit an annual report to the board, in the manner specified by the board, that includes any revision to the local used oil collection program adopted pursuant to Section 48690, a description of all measures taken to implement the program, and a description of how payments were expended.

SEC. 15. Section 48676 of the Public Resources Code is amended to read:

48676. The board shall make available on its Internet Web site an annual report that includes the accumulated industrial and lubricating oil sales and used oil recycling rates.

SEC. 16. Section 48691 of the Public Resources Code is amended to read:

48691. (a) A local used oil collection program shall provide for used lubricating oil collection by either of the following or a combination of the two:

(1) Ensuring that at least one certified used oil collection center is available for every 100,000 residents not served by curbside used oil collection, that accepts oil from the public at no charge, during the hours the center is open for business.

(2) Providing used oil curbside collection at least once a month.

(b) A local used oil collection program shall include a public education program that informs the public of locally available used oil recycling opportunities.

(c) A local government may implement its used oil collection program in conjunction with other similar programs in order to improve used oil recycling efficiency.

(d) A local government that has implemented the used oil collection and education elements of subdivisions (a) and (b) may also include, in the local used oil collection program one or both of the following:

(1) Provisions for the mitigation and the collection of oil and oil byproducts, including other solid waste that may be mixed with oil or oil byproducts from stormwater runoff, including devices to capture that stormwater runoff, such as the use of storm drain inlet filter devices. A local government shall not receive a payment pursuant to Section 48690 for the purposes identified pursuant to this paragraph unless the local government certifies that it has a stormwater management program that is approved by the appropriate California regional water quality control board and that the provisions in the local used oil collection program approved for funding under this paragraph are consistent with that approved stormwater management program.

(2) A used oil filter collection and recycling program.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because

this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O